

EXHIBIT A



The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.  
MICKELSON, and the marital community  
thereof,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

No. C11-01445 MJP

DEFENDANT MERS'S  
RESPONSES AND OBJECTIONS  
TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES AND  
REQUESTS FOR PRODUCTION

Defendant MERS responds and objects to Plaintiffs' First Set of Interrogatories and Requests for Production as follows:

**I. GENERAL OBJECTIONS**

MERS makes the following General Objections to Plaintiffs' First Set of Interrogatories and Requests for Production, and any subsequent requests related to the same subject matter.

MERS reserves the right to supplement, amend, or qualify its General Objections.

1. **Scope.** MERS objects to Plaintiffs' discovery requests because, as written, they are overbroad and unduly burdensome, do not seek information or documents relevant to the subject matter of the pending action, and are not reasonably calculated to lead to the discovery of admissible evidence.

2. **Proportionality.** MERS objects to Plaintiffs' discovery requests as overbroad

DEFENDANT MERS'S RESPONSES AND OBJECTIONS TO PLAINTIFFS'  
FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION  
(C11-01445 MJP) — 1  
DWT 18753678v3 0036234-000130

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### III. INTERROGATORIES AND REQUESTS FOR PRODUCTION

INTERROGATORY NO. 1: Identify all persons who provided information or assisted in any manner with the preparation of your answers and responses to this first set of interrogatories and requests for production. For each person listed, describe in detail what information or assistance was provided. Include the position held by the person, the length of time the respondent has held this position, and the duties performed for Defendant.

ANSWER: MERS objects to Interrogatory No. 1 to the extent it seeks information protected by the attorney-client privilege or work-product doctrines. MERS further objects to this Interrogatory because it seeks irrelevant information not likely to lead to the discovery of admissible evidence—namely, the “time the respondent has held this position, and the duties performed for Defendant,” as those facts would not make more or less likely any material, disputed fact in this case.

Subject to and without waiving the foregoing objections, MERS responds that in-house corporate counsel for MERS provided information and/or assistance with the MERS discovery responses.

INTERROGATORY NO. 2: For each of the persons identified in response to interrogatory number one, please state whether they have personal knowledge regarding any aspect of the non-judicial foreclosure which is the subject of this dispute.

ANSWER: MERS objects to Interrogatory No. 2 to the extent it seeks information protected by the attorney-client privilege or work-product doctrines. Subject to and without waiving the foregoing objection, MERS responds that in-house corporate counsel for MERS does not have personal knowledge regarding any aspect of the Non-Judicial Foreclosure of the Property.

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2 INTERROGATORY NO. 3: Describe the relationship(s), contractual or otherwise,  
3 between MHL Funding Corp., and MERS that gave rise to the designation of MERS as  
4 nominee or beneficiary under the subject Deed of Trust and state further whether there was any  
5 consideration given for such designation

6 ANSWER: MERS objects to Interrogatory No. 3 to the extent it seeks information not  
7 reasonably calculated to lead to the discovery of admissible evidence in this litigation (General  
8 Objection No. 1). Plaintiffs cannot use this lawsuit to engage in a fishing expedition for  
9 information that has no bearing on their claims. *See Cuomo v. Clearing House Ass'n, LLC*, 129  
10 S. Ct. 2710, 2719 (2009) (prohibiting "fishing expeditions or an undirected rummaging through  
11 . . . records for evidence of some unknown wrongdoing"). MERS also objects to Interrogatory  
12 No. 3 to the extent it calls for producing documents already in Plaintiffs' possession, custody,  
13 or control, or that are obtainable through other, more convenient sources, such as the Island  
14 County's auditor's office (General Objection No. 5). *See Fed. R. Civ. P. 26(b)(2)(C)(i)*.  
15 MERS further objects that Plaintiffs lack standing to challenge any alleged or real agreement  
16 between MHL Funding Corp. and MERS other than that which appears on the face of  
17 Plaintiffs' Deed of Trust. *See Hairston v. Pac. 10 Conf.*, 101 F.3d 1315, 1320 (9th Cir. 1996)  
18 (affirming dismissal of contract claims where plaintiffs failed to show they were third-party  
19 beneficiaries of the contract under Washington law).

20 Subject to and without waiving the foregoing objections, MERS responds as follows:  
21 MHL Funding Corporation is a member of the MERS® System, and at loan origination,  
22 Plaintiffs and MHL Funding Corporation agreed that MERS would be the named beneficiary of  
23 Plaintiffs' Deed of Trust, as nominee for MHL Funding Corporation and MHL Funding  
24 Corporation's successors and assigns. *See Amended Compl., Ex. B [Dkt. 29-1]; Cervantes v.*  
25 *Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1042 (9th Cir. 2011) (affirming dismissal of  
26 foreclosure-based fraud claims because plaintiffs had agreed to MERS's role by signing their  
27 deeds of trust); *Bhatti v. Guild Mortg. Co.*, 2011 WL 6300229, at \*5 (W.D. Wash. 2011)

DEFENDANT MERS'S RESPONSES AND OBJECTIONS TO PLAINTIFFS'  
FIRST INTERROGATORIES AND REQUESTS FOR PRODUCTION  
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1 (“Plaintiffs specifically agreed to MERS’ role as beneficiary under the Deed of Trust they  
2 signed.”; dismissing claims). As a result, MERS held legal title to the security instrument, as  
3 nominee for MHL Funding Corp.

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5  
6 REQUEST FOR PRODUCTION NO. 1: Produce all documents that support this  
7 relationship between MHL Funding Corp., as the Lender and designation of MERS as nominee  
8 and beneficiary under the subject Deed of Trust:

9 RESPONSE: MERS incorporates as if more fully stated herein its objections to  
10 Interrogatory No. 3. Subject to and without waiving those objections, MERS responds that the  
11 Deed of Trust is a document responsive to this request, and Plaintiffs have attached that  
12 document to their Complaint. Thus, MERS will not reproduce that document again. MERS  
13 objects to producing any other documents because MHL Funding Corporation is not a party to  
14 this lawsuit and is no longer in operation. Therefore, MHL Funding Corporation’s former  
15 membership documents are neither relevant nor reasonably calculated to lead to the discovery  
16 of admissible evidence.

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19 INTERROGATORY NO. 4: Describe the relationship(s), contractual or otherwise,  
20 between MortgageIt, MHL Funding Corp. Chicago Title and MERS at the time Plaintiffs  
21 executed the subject Note and Deed of Trust.

22 ANSWER: MERS incorporates as if more fully stated herein its objections to  
23 Interrogatory No. 3 and Request for Production No. 1. Subject to and without waiving those  
24 objections, MERS responds as follows:

25 MortgageIt, MHL Funding Corporation, and Chicago Title are members of the MERS®  
26 System. At loan origination, Plaintiffs and MHL Funding Corporation agreed that MERS  
27 would serve as the mortgagee of record as the nominee for MHL Funding Corporation, and that

Chicago Title would serve as the “Trustee” under the Deed of Trust. *See* Amended Compl., Ex. B [Dkt. 29-1]; *Cervantes*, 656 F.3d at 1042; *Bhatti*, 2011 WL 6300229, at \*5. Chicago Title also issued an ALTA Lender’s Policy, insuring MERS acting as nominee for MHL Funding Corporation and MERS holding, as nominee for MHL Funding Corporation, legal title to the security interest securing the Promissory Note.

INTERROGATORY NO. 5: As to your status of nominee and/or beneficiary under the subject Deed of Trust, state whether you ever held the Promissory Note and the Deed of Trust physically and where these documents were maintained while under your control and custody.

ANSWER: MERS objects to Interrogatory No. 5 to the extent it seeks information not reasonably calculated to lead to the discovery of admissible evidence in this litigation (General Objection No. 1). “[T]he [borrower] should be indifferent as to who owns or has an interest in the note so long as it does not affect [her] ability to make payments on the note.” *See In re Veal*, 450 B.R. 897, 912 (B.A.P. 9th Cir. 2011); *see also id.* (“[Plaintiffs] should not care who actually owns the Note—and it is thus irrelevant whether the Note has been fractionalized or securitized—so long as they know who they should pay.”). Moreover, “[c]ourts have ‘routinely held that Plaintiff’s “show me the note” argument lacks merit.’” *Bern v. Wells Fargo Bank, N.A.*, 2011 WL 1561799, \*2 (W.D. Wash. 2011) (collecting cases; dismissing complaint without leave to amend under Rules 12(b)(6) and 56). Plaintiffs cannot use this lawsuit to engage in a fishing expedition for information that has no bearing on their claims. *See Cuomo*, 129 S. Ct. at 2719 (prohibiting “fishing expeditions or an undirected rummaging through . . . records for evidence of some unknown wrongdoing”).

Subject to and without waiving the foregoing objections, MERS incorporates as if more fully stated herein its answer to Interrogatory No. 3, and further responds that it never physically possessed the original Note or original Deed of Trust.

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2 INTERROGATORY NO. 6: If you held the original Note and Deed of Trust at the time  
3 of the designation of nominee/beneficiary, state the physical address where the documents were  
4 held, the time period during which the documents were held by MERS, and identify the  
5 custodian of these documents.

6 ANSWER: MERS objects to Interrogatory No. 6 because it seeks information not  
7 reasonably calculated to lead to the discovery of admissible evidence in this litigation (General  
8 Objection No. 1). “[T]he [borrower] should be indifferent as to who owns or has an interest in  
9 the note so long as it does not affect [her] ability to make payments on the note.” *See In re*  
10 *Veal*, 450 B.R. at 912; *see also id.* (“[Plaintiffs] should not care who actually owns the Note—  
11 and it is thus irrelevant whether the Note has been fractionalized or securitized—so long as  
12 they know who they should pay.”). Moreover, “[c]ourts have ‘routinely held that Plaintiff’s  
13 ‘show me the note’ argument lacks merit.” *Bern*, 2011 WL 1561799, \*2 (collecting cases;  
14 dismissing complaint without leave to amend under Rules 12(b)(6) and 56). Plaintiffs cannot  
15 use this lawsuit to engage in a fishing expedition for information that has no bearing on their  
16 claims. *See Cuomo*, 129 S. Ct. at 2719 (prohibiting “fishing expeditions or an undirected  
17 rummaging through . . . records for evidence of some unknown wrongdoing”). MERS further  
18 objects to Interrogatory No. 6 because “the discovery sought is unreasonably cumulative or  
19 duplicative.” Fed. R. Civ. P. 26(b)(2)(C)(i).

20 Subject to and without waiving the foregoing objections, MERS incorporates as if more  
21 fully stated herein its answer to Interrogatories Nos. 3 and 5.

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24 INTERROGATORY NO. 7: If you held the original Note, Mortgage and Deed of Trust  
25 as nominee/beneficiary, did you keep a log to account for the movement of the original  
26 documents, i.e., whether they were checked out of the maintenance facility for any purposes.



1        ANSWER: MERS objects to Interrogatory No. 7 because it seeks information not  
 2 reasonably calculated to lead to the discovery of admissible evidence in this litigation (General  
 3 Objection No. 1). “[T]he [borrower] should be indifferent as to who owns or has an interest in  
 4 the note so long as it does not affect [her] ability to make payments on the note.” *See In re*  
 5 *Veal*, 450 B.R. at 912; *see also id.* (“[Plaintiffs] should not care who actually owns the Note—  
 6 and it is thus irrelevant whether the Note has been fractionalized or securitized—so long as  
 7 they know who they should pay.”). Moreover, “[c]ourts have ‘routinely held that Plaintiff’s  
 8 “show me the note” argument lacks merit.” *Bern*, 2011 WL 1561799, \*2 (collecting cases;  
 9 dismissing complaint without leave to amend under Rules 12(b)(6) and 56). Plaintiffs cannot  
 10 use this lawsuit to engage in a fishing expedition for information that has no bearing on their  
 11 claims. *See Cuomo*, 129 S. Ct. at 2719 (prohibiting “fishing expeditions or an undirected  
 12 rummaging through . . . records for evidence of some unknown wrongdoing”).

13        Subject to and without waiving the foregoing objections, MERS incorporates as if more  
 14 fully stated herein its answer to Interrogatories Nos. 3, 5, and 6.

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 17        REQUEST FOR PRODUCTION NO. 2: Produce copies of all documents identified in  
 18 response to Interrogatory No. 7.

19        RESPONSE: MERS incorporates as if more fully stated herein its objections and  
 20 answer to Interrogatory No. 7.

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 22  
 23        INTERROGATORY NO. 8: As to your status as nominee and/or beneficiary under the  
 24 Deed of Trust, state when and how you relinquished control and custody of the Promissory  
 25 Note and Deed of Trust and describe the transfer in details.

26        ANSWER: MERS objects to all subparts of Interrogatory No. 8 to the extent it seeks  
 27 information not reasonably calculated to lead to the discovery of admissible evidence in this



1 objects to Interrogatory No. 9 to the extent it calls for information protected by the attorney-  
2 client privilege or work-product doctrine (General Objection No. 3).

3 Subject to and without waiving the foregoing objections, MERS responds that it has no  
4 first-hand knowledge of any Note transfers, and pursuant to Fed. R. Civ. P. 33(d), will produce  
5 the MERS Milestone report reflecting entries made by MERS members reflecting Note  
6 transfers.

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9 REQUEST FOR PRODUCTION NO. 4: Produce copies of all documents identified in  
10 response to Interrogatory No. 9.

11 RESPONSE: MERS incorporates as if more fully stated herein its answer and  
12 objections to Interrogatory No. 9.

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15 INTERROGATORY NO. 10: State whether the Deed of Trust, referred herein as  
16 "DOT", executed by Plaintiffs in this case in this case has been transferred or assigned  
17 including the identification of any and all persons you may call as a witness to establish the  
18 assignment or transfer of the same. With reference to each of these witnesses, state as follows:

- 19 a. Name; address, title and job description;  
20 b. Whether any written notes, reports, memoranda, communications, have been  
21 prepared and furnished to any of the named Defendants concerning the assignment or transfer  
22 of the DOT;  
23 c. Whether any internal memorandum, notes, letters, have been issued concerning  
24 the specific provisions of the DOT;  
25 d. The substance on which you expect each witness to testify;  
26 e. The opinions to which he or she is expected to testify; and  
27 f. A summary of the grounds for each opinion.

1        ANSWER: MERS objects to Interrogatory No. 10 because “the discovery sought is  
 2        unreasonably cumulative or duplicative.” Fed. R. Civ. P. 26(b)(2)(C)(i). MERS further objects  
 3        to Interrogatory No. 10 because it seeks information not reasonably calculated to lead to the  
 4        discovery of admissible evidence in this litigation (General Objection No. 1). “[T]he  
 5        [borrower] should be indifferent as to who owns or has an interest in the note so long as it does  
 6        not affect [her] ability to make payments on the note.” *See In re Veal*, 450 B.R. at 912; *see also*  
 7        *id.* (“[Plaintiffs] should not care who actually owns the Note—and it is thus irrelevant whether  
 8        the Note has been fractionalized or securitized—so long as they know who they should pay.”).  
 9        Plaintiffs cannot use this lawsuit to engage in a fishing expedition for information that has no  
 10       bearing on their claims. *See Cuomo*, 129 S. Ct. at 2719 (prohibiting “fishing expeditions or an  
 11       undirected rummaging through . . . records for evidence of some unknown wrongdoing”).  
 12       MERS also objects to Interrogatory No. 10 because the information sought is already in  
 13       Plaintiffs’ possession, custody, or control, or is otherwise available through other, more  
 14       convenient and less burdensome sources (General Objection No. 5). Additionally, MERS  
 15       objects to Interrogatory No. 10, subparts e-f, because they exceed the number of interrogatories  
 16       permitted (General Objection No. 10). *See* Fed. R. Civ. P. 33(a)(1) (limiting number of  
 17       interrogatories a party may serve to 25, including discrete subparts); *Paananen*, 2009 WL  
 18       3327227, at \*6 (parties must answer the first 25 interrogatories and then object; parties who  
 19       “pick and choose” which interrogatories to answer risk waiving the objection).

20       Subject to and without waiving the foregoing objections, MERS incorporates its answer  
 21       to Interrogatory No. 8 as if more fully stated herein. MERS further responds that it has not  
 22       identified any witnesses at this time, but that pursuant to Fed. R. Civ. P. 33(d)(1), it will  
 23       produce a record showing MERS’s Assignment of the Deed of Trust (which Plaintiffs have  
 24       filed as Exhibit D to their Amended Complaint [Dkt. 29-1]).

1        REQUEST FOR PRODUCTION NO. 5: Produce copies of all documents identified in  
2 Interrogatory No. 10.

3        RESPONSE: MERS incorporates its objections and answer to Interrogatory No. 10 as  
4 if more fully stated herein. MERS also notes that Plaintiffs filed with their Amended  
5 Complaint a copy of the recorded Assignment of Deed of Trust. Amended Compl., Ex. D [Dkt.  
6 29-1].

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9        INTERROGATORY NO. 11: State whether the “servicing rights” in this case in this  
10 case has been transferred or assigned including the identification of any and all persons you  
11 may call as a witness to establish the assignment or transfer of the same. With reference to each  
12 of these witnesses, state as follows:

- 13        a.        Name; address, title and job description;  
14        b.        Whether any written notes, reports, memoranda, communications, have been  
15 prepared and furnished to any of the named Defendants concerning the assignment or transfer  
16 of the DOT;  
17        c.        Whether any internal memorandum, notes, letters, have been issued concerning  
18 the specific provisions of the DOT;  
19        d.        The substance on which you expect each witness to testify;  
20        e.        The opinions to which he or she is expected to testify; and  
21        f.        A summary of the grounds for each opinion.

22        ANSWER: MERS incorporates its objections to Interrogatory No. 10 as if more fully  
23 stated herein. MERS further objects to Interrogatory No. 11 because it exceeds the number of  
24 interrogatories permitted (General Objection No. 10). *See* Fed. R. Civ. P. 33(a)(1) (limiting  
25 number of interrogatories a party may serve to 25, including discrete subparts); *Paananen*,  
26 2009 WL 3327227, at \*6 (parties must answer the first 25 interrogatories and then object;  
27 parties who “pick and choose” which interrogatories to answer risk waiving the objection).

1 *Elec. Registration Sys.*, 2011 WL 5827813, \*6 (W.D. Wash. 2011) (citing cases). *See also*  
 2 *Bhatti*, 2011 WL 6300229, \*5 (same; citing cases); *Corales v. Flagstar Bank, FSB*, --- F. Supp.  
 3 2d ---, 2011 WL 4899957, \*4 (W.D. Wash. 2011) (whether loan securitized has no bearing on  
 4 whether defendant had authority to foreclose). Plaintiffs cannot use this lawsuit to engage in a  
 5 fishing expedition for information that has no bearing on their claims. *See Cuomo*, 129 S. Ct.  
 6 at 2719 (prohibiting “fishing expeditions or an undirected rummaging through . . . records for  
 7 evidence of some unknown wrongdoing”). Finally, MERS objects to Interrogatory No. 13,  
 8 because it exceeds the number of interrogatories permitted (General Objection No. 10). *See*  
 9 Fed. R. Civ. P. 33(a)(1) (limiting number of interrogatories a party may serve to 25, including  
 10 discrete subparts); *Paananen*, 2009 WL 3327227, at \*6 (parties must answer the first 25  
 11 interrogatories and then object; parties who “pick and choose” which interrogatories to answer  
 12 risk waiving the objection).

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 15 REQUEST FOR PRODUCTION NO. 8: Produce the master document controlling this  
 16 specific securitized trust you contend Plaintiffs’ mortgage loan has been placed into.

17 RESPONSE: MERS incorporates as if more fully stated herein its objections to  
 18 Interrogatory No. 13. MERS further objects to the assertion it “contend[s] Plaintiffs’ mortgage  
 19 loan has been placed into” a “securitized trust,” as that assumes facts for which no basis exists.

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 22 INTERROGATORY NO. 14: Please describe in detail your role in the securitization  
 23 process and your dealings with owners of the mortgage backed securities who owned Plaintiff’s  
 24 Deed of Trust or held partial interests therein.

25 ANSWER: MERS incorporates as if more fully stated herein its objections to  
 26 Interrogatory No. 13 and Request for Production No. 8.